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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Equal Access and Interconnection	)	CC Docket No. 94-54
Obligations Pertaining to Commercial	)	RM-8012
Mobile Radio Services	)	

To: The Commission

COMMENTS OF BELLSOUTH

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BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Cellular Corp. (collectively "BellSouth"), by their attorneys, hereby submit these Comments in response to the Commission's *Notice of Proposed Rule Making and Notice of Inquiry*, FCC 94-145 (July 1, 1994), 59 Fed Reg. 35664 (July 13, 1994) (*Notice*).

SUMMARY

BellSouth urges the Commission not to require LECs to file CMRS interconnection tariffs. The current system of negotiated cellular and paging interconnection arrangements have worked well over time and have largely accommodated the business and engineering concerns of both the wireless carriers and the LECs. Negotiated arrangements are more flexible than tariffs. They allow interconnection issues to be addressed as business and engineering matters, on a cooperative basis. Tariff filings, by contrast, promote adversarial disputes and heighten, rather than bridge, the differences among the parties.

Currently, interconnection arrangements are negotiated by LECs with all existing and

terms of such interconnection agreements are public and are available to new wireless providers without nondiscrimination. There is, accordingly, no need to require that such agreements be filed with the Commission.

Further "safeguards" are not necessary, BellSouth submits. Because of the open nature of the interconnection arrangements, there is no need for "most favored nation" clauses. Indeed, the inclusion of such provisions will only lead to litigation. Similarly, the filing of "contract tariffs" is unnecessary and would likely be counterproductive.

BellSouth urges the Commission not to mandate particular forms of CMRS-to-CMRS interconnection. The competitive nature of the CMRS market, in which no carrier has facilities that others need to use, eliminates any basis for such regulatory intervention. For similar reasons, tariffs for such interconnection are unnecessary.

CMRS providers should not be required to provide interconnected access to third parties to their roaming databases and other similar components of their intelligent network services. Such access would have the potential to bypass features ordered by customers, such as call forwarding and voice mail. Subscribers provide this information for the internal use of their cellular carriers and for the completion of calls in accordance with their instructions. Providing third parties with unfettered interconnected access to such databases would be contrary to customers' expectations.

While switch-based resellers of CMRS services should be subject to the same interconnection requirements as any other CMRS provider, BellSouth notes that there are not currently any companies operating in this manner. BellSouth agrees with the Commission's decision not to propose any requirement that CMRS services be unbundled to create artificial opportunities for switched resale.

BellSouth also supports the Commission's tentative plan to preempt state regulations requiring CMRS-to-CMRS interconnection. Once the Commission has determined that the public interest would not be served by regulating such interconnection, state requirements to the contrary would be inconsistent with the federally-established policies.

With respect to resale of CMRS services, BellSouth is generally in agreement that the Commission should forbid CMRS providers from restricting resale of their services. The Commission should, however, adopt one very significant exception to this policy: Facilties-based CMRS providers should not be required to provide service to their facilities-based competitors for resale. This exception is critical to give new CMRS providers an incentive to complete their construction promptly. It is also important because it will allow licensees to compete on the basis of product differentiation -- *i.e.*, facilities-based quality competion. Allowing resale by competitors would eliminate an important aspect of facilities-based competition.

In addressing resale issues, the Commission should also make clear that the Bell Companies' LECs are fully authorized to resell all CMRS services, including cellular service. The Commission should make clear that the provision of Section 22.901 requiring structural separation for "providing" cellular service does not restrict the LECs from reselling cellular service purchased on an arm's length basis.

BellSouth believes that in a competitive service such as CMRS, there should not be any equal access requirement. The MFJ currently requires the Bell Companies' CMRS operations to provide equal access, however, upsetting the competitive balance. To achieve regulatory parity, the Commission should ensure that all competitors are subject to the same equal access requirements. These requirements should be no greater than imposed by the MFJ, and any modification or

elimination of the MFJ in this respect should automatically lessen or eliminate the FCC-imposed equal access obligation as well.

The Commission sought comment on what geographic boundaries should be used to delineate a carrier's local calling area. Calls to or from points outside this area would be subject to the equal access requirement. BellSouth urges the Commission not to be overly restrictive, but at the same time to ensure regulatory parity in light of the MFJ. BellSouth proposes that the Commission allow a CMRS provider to establish a local calling area based on the area to which it provides wireless service, either directly or in concert with others, except to the extent that a smaller local calling area is established by a court or regulatory agency for any CMRS provider in such area.

BellSouth urges the Commission to allow CMRS providers to meet any equal access requirement it may impose by utilizing a local exchange carrier's access tandem. Finally, the Commission should ensure that CMRS providers are authorized to recover the cost of equal access conversion.

DISCUSSION

I. INTERCONNECTION ISSUES

A. LEC-CMRS Interconnection Should Not Be Subject to a Tariff Requirement

In the *CMRS Second Report*, the Commission extended its policies governing the interconnection of Part 22 licensees with local exchange carrier ("LEC") facilities to all CMRS licensees.[1] The Commission is now considering whether to require LECs to file interconnection

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[1] *Regulatory Treatment of Mobile Services*, Gen. Docket 93-252, *Second Report and Order*, 9 FCC Rcd. 1411, 1497-99 (1994) (*CMRS Second Report*); *see generally Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 59 Rad. Reg. 2d (P&F) 1275 (1986) (*Policy*

tariffs instead of continuing its reliance on interconnection arrangements negotiated in good faith. The Commission asked whether it should prescribe specific rate elements or the nature and type of cost support required with such tariffs. It also sought comment on MCI's suggestion that CMRS interconnection be provided under the LECs' expanded interconnection tariffs, and on whether contract tariffs would provide a more flexible alternative to a standardized tariff requirement. If a tariff obligation is not imposed, the Commission seeks comment on requiring a "most favored nation" clause in interconnection agreements and on requiring the filing of all interconnection agreements with the Commission for public inspection.[2]

BellSouth submits that, for CMRS, interconnection arrangements negotiated in good faith best serve the public interest. The principal reason for keeping the present system is that it now works well and is not in need of repair. The contracts that currently govern the interconnection of cellular and paging systems with the landline network are the product of negotiations that have over the last decade accommodated the needs of wireless service providers better, and at a lower cost, than would have been the case under tariffing.[3] These contracts make available a wide variety of interconnection options addressing the differing interconnection requirements of paging, cellular, and IMTS mobile telephone licensees.[4] As new CMRS technologies and services develop, the

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Statement), *aff'd and clarified*, 2 FCC Rcd. 2910 (1987) (*Interconnection Order*), *aff'd and further clarified*, 4 FCC Rcd. 2369 (1989) (*Cellular Interconnection Order*).

[2] *Notice* at ¶¶ 113-120. A "most favored nation" clause provides that "the most favorable terms, conditions, and rates provided by the LEC to one CMRS provider [must] be made available to all." *Id.* at ¶ 119.

[3] *Id.* at ¶ 114.

[4] IMTS is the acronym for Improved Mobile Telephone Service, an automatic, trunked mobile telephone service that has largely been rendered obsolete by cellular service.

existing system allows CMRS licensees to obtain new interconnection arrangements tailored to their particular requirements.

1. Negotiated Arrangements Are Inherently More Flexible than Tariffs, Which Is Critical to Deployment of New Services

Negotiations are, in many instances, cooperative efforts that facilitate the development of interconnection arrangements that suit the particular needs and requirements of the parties. This is an especially appropriate way to arrive at the terms and conditions for interconnection in a dynamically evolving field, such as CMRS. Negotiations allow a result to be reached based on the unique engineering and business requirements of all concerned. The interconnection arrangements made available by local exchange carriers to CMRS providers are not intended, nor are they required, to be common carrier services generally available to all customers. An agreement among carriers based on good-faith negotiations thus allows CMRS providers to obtain interconnection arrangements suited to their requirements that might not otherwise be made available. Negotiated arrangements are flexible, in that they can be changed as needed due to changing business and engineering requirements, without externally imposed delays.

Tariffs, on the other hand, are inflexible. They are descriptions of common carrier services that the carrier has chosen to make generally available. In most cases, a carrier is under no obligation to negotiate with customers to make services available that are not contained in its tariff. Moreover, a tariff filing is not made as part of a negotiation process leading to compromise among the carrier and its customers, based on their business and engineering needs. It is a regulatory filing made in anticipation of an adversarial legal process. This process is unlikely to lead to mutually acceptable compromises, because the carrier and customers undertake lobbying and legal efforts more likely to crystallize differences than bridge them.

The need for flexibility in providing a rapidly evolving new set of wireless services is a critical reason for allowing negotiated agreements, and not tariffing, to be the means for addressing the interconnection of CMRS in the future. Requiring LECs to provide interconnection only pursuant to tariff would hinder the rapid introduction of new services and deployment of new technologies. The negotiation process, aided when necessary by the informal participation of Commission staff,[5] leads to results that have largely satisfied the participants.[6] As the Commission has noted, cellular carriers "express confidence that they currently receive fair, nondiscriminatory interconnection arrangements with the LECs.[7] Similarly, Nextel, an Enhanced SMR operator, "prefers the flexibility it has to negotiate the interconnection arrangements needed to provide service."[8]

Negotiated interconnection arrangements are much more likely than tariffs to accommodate CMRS providers' needs for new forms of interconnection. By working together through negotiations, parties enhance the development of new and innovative services. A tariff, on the other

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5 *See Notice* at ¶ 112.

6 The requirement that mobile carriers and LECs negotiate in good faith has ensured a cooperative effort, involving compromises on all sides, to craft an interconnection agreement that takes into account the needs and concerns of all parties. The fact that some parties who are generally satisfied with the outcome of this process noted that they nevertheless have "reservations," *see Notice* at ¶ 112, merely reflects the fact that a compromise involves concessions. BellSouth notes that in proceedings before the California PUC, tariffed interconnection was uniformly opposed by cellular carriers and SMRs. *Investigation on the Commission's Own Motion into the Regulation of Cellular Radiotelephone Utilities*, Investigation No. 88-11-040, Decision No. 94-04-085, 1994 Cal. PUC LEXIS 344, at *2 & n.1, *16-17 (Cal. P.U.C. Apr. 20, 1994) (*CPUC Tariffing Decision*).

7 *Notice* at ¶ 112.

8 *Id.; see CPUC Tariffing Decision* at 2.

hand, represents a common carrier service that the carrier chooses to make available generally.[9] Moreover, the tariff filing process interposes a regulatory agency (the FCC or a state PUC) between the carrier and customer. This can lead to business and engineering relationships being governed by regulators based on a legal record and pleadings, instead of those relationships being forged by the companies involved based on their business and engineering requirements. Establishing the parameters for interconnection through LEC tariff filings is thus more likely to lead to litigation than to compromises that enable new services.[10] Moreover, in the absence of negotiated agreements, the Commission would likely find it necessary to establish detailed regulations, specifying technical details, rate elements, and other aspects of interconnection, as it has in the *Expanded Interconnection* proceeding.[11] That is likely to lead to considerably less flexibility, to the detriment of new CMRS providers and their customers. Furthermore, substituting rulemaking and litigation for negotiation

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[9] Under traditional tariff regulation, the CMRS provider would be a customer taking service under the LEC's tariff. The tariff filed by the LEC, if not rejected, becomes effective after a specified period. This process provides a customer with no simple mechanism for ensuring that the tariff that is filed provides a service designed to meet the customer's specialized needs. Thus, mobile carriers have favored negotiated interconnection agreements over traditional carrier-initiated tariffs. *See Interconnection Order,* 2 FCC Rcd. at 2916; *see also CPUC Tariffing Decision* at *13 n.10.

[10] When parties reach an agreement, the need for litigation is reduced to matters involving a disagreement as to the meaning of the terms of the agreement or an alleged breach. Tariff filings, however, frequently initiate an adversarial litigation process. This can be the case even if the tariff filings are based on negotiated agreements. The ENFIA (Exchange Network Facilities for Interstate Access) Tariff implemented a settlement agreement that led to extensive litigation. *See AT&T v. FCC*, 832 F.2d 1285 (D.C. Cir. 1987); *Bell Telephone Co. v. FCC*, 761 F.2d 789 (D.C. Cir. 1985); *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied,* 469 U.S. 1227 (1985); *MCI Telecommunications Corp. v. FCC*, 712 F.2d 517 (D.C. Cir. 1983).

[11] *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket 91-141, *Report and Order and Notice of Proposed Rulemaking*, 7 FCC Rcd. 7369, *recon., Memorandum Opinion and Order*, 8 FCC Rcd. 127 (1992), *vacated in part and remanded sub nom. Bell Atlantic v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994), *on remand, Memorandum Opinion and Order*, FCC 94-190 (July 25, 1994); *Second Memorandum Opinion and Order on Reconsideration,* 8 FCC Rcd. 7341 (1993).

will inevitably delay the availability of new forms of interconnection that may be most appropriate for new CMRS technologies and services.

The tariff filing processes are also mired down with numerous antiquated requirements that contribute nothing to satisfactory interconnection arrangements. On the other hand, they represent a unique set of hurdles that must be overcome. The considerable administrative costs involved in filing and maintaining tariffs, the often significant waiting periods before a tariff may become effective, and the potential need to supply extensive cost support data make tariff filings considerably less flexible and responsive to changing conditions than negotiated agreements. These same factors also have the effect of increasing the ultimate cost of the interconnection arrangements made available.

Regulating interconnection by tariff is also undesirable because, as the Commission has noted, the same interconnection arrangements are used for both interstate and intrastate mobile communications.[12] Even though the costs and rates can be segregated between the intrastate and interstate jurisdictions,[13] it is nevertheless difficult to determine which calls terminated within a given LATA are interstate or intrastate. Thus, a federal tariffing requirement would effectively require tariffs that governed both intrastate and interstate communications, which would unnecessarily preempt state jurisdiction over intrastate interconnection rates even though, as the Commission has often noted,[14] the traffic carried is predominantly intrastate and local.

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12 *Notice* at ¶ 104.

13 *Id.*

14 *Id.* at ¶ 108; *see also Policy Statement*, 59 Rad. Reg. 2d (P&F) at 1284.

2. Further Safeguards, Such as "Most Favored Nation" Clauses and Contract Tariff Filings, Would Not Achieve Competitive Benefits

BellSouth submits that requiring LECs to file their interconnection agreements with the FCC would not achieve any significant benefits. At present, these arrangements are negotiated with all existing and proposed participants in the CMRS industry statewide and are filed with state regulators. They are already available for public inspection, giving new entrants access to the terms negotiated by existing service providers and ensuring nondiscriminatory interconnection.[15] BellSouth submits that this makes further "safeguards" superfluous and duplicative.

There is no reason to fear that new CMRS entrants would be treated in a discriminatory fashion by LECs if interconnection is covered by negotiated agreements instead of tariffs, and no need for a "most favored nation" clause. BellSouth Telecommunications negotiates interconnection agreements with existing and new CMRS licensees on a statewide basis. After execution of the contract by all licensees in a state, the contract is filed with that state's regulatory commission, either in contract or tariff format. Thus, there are no secret interconnection agreements with particular licensees that might raise questions of discrimination.

A new CMRS licensee may become a signatory to the agreement and get the same terms for interconnection as any similarly situated existing licensee. As a signatory, a new CMRS entrant requiring the same form of interconnection as an existing carrier would receive it under the same terms and conditions, and at the same rates, as the existing carrier. A new CMRS provider requiring a different form of interconnection would be free to seek it through negotiations, and once terms are negotiated and incorporated into the statewide contract, it will be available to any other similarly situated provider.

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[15] *See Notice* at ¶ 120.

A "most favored nation" clause is thus not needed to prevent discrimination. Requiring such a clause would have distinct disadvantages, however. It would have the net effect of converting each interconnection agreement into a tariff governing not just the arrangements among the parties to the agreement but all others. It would eliminate the flexibility inherent in negotiated agreements that allows the particular needs of specific entities to be considered. One CMRS provider might be willing to compromise on one feature as a tradeoff to achieve a more important objective; under a "most favored nation" clause, such compromises would be endangered, because the company could demand the feature it had given up. The inclusion of a "most favored nation" clause would also be likely to foster extensive litigation over whether aspects of another provider's interconnection agreement should have been given effect at some point in the past.

Finally, requiring the filing of negotiated contracts as "contract tariffs" would add nothing of value to the existing system.[16] It would simply interject delay and add to the LECs' cost of doing business, which would result in higher interconnection costs. This would clearly disserve the public interest.

B. The Commission Should Not Mandate Specific Types of CMRS-to-CMRS Interconnection

Historically, the Commission has required LECs to provide interconnection because, absent regulation of interconnection, the Commission feared that LECs could use their control over their facilities to deter competition. Unlike LECs, however, CMRS providers do not control facilities needed by their competitors, nor do they have sufficient market power to create barriers to entry.

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[16] A private intercarrier contract may be implemented through tariff filings, but under the *Sierra-Mobile* doctrine, the FCC may not permit the filing carrier to abrogate the contract through tariff revisions. *See MCI Telecommunications Corp. v. FCC*, 822 F.2d 80, 84 (D.C. Cir. 1987) (*citing FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *United States Gas Pipe Line Co. v. Mobile Gas Service Co.*, 350 U.S. 332 (1956)).

A CMRS provider may, under some circumstances, have an obligation to provide interconnection facilities to another CMRS provider, pursuant to Sections 201 and 202 of the Communications Act, 47 U.S.C. § 201-202. BellSouth submits, however, that the Commission should refrain from adopting policies or rules regarding the specific types of interconnection that CMRS providers must make available to other CMRS providers.

1. The Competitive CMRS Market Eliminates the Need for an Interconnection Requirement

The Commission has recognized that CMRS providers do not control facilities to which their competitors require access.[17] The Commission also has found that paging is "highly competitive,"[18] that SMR providers lack market power,[19] and that air-to-ground service providers are non-dominant.[20] Although the Commission has stopped short of proclaiming cellular fully competitive,[21] the cellular marketplace is more competitive than the interexchange marketplace[22] and is sufficiently competitive to warrant forbearance from Title II regulation.[23] In addition, Chairman Hundt has stressed that the Commission must refrain from adopting regulations that impede competition[24] and

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17 *CMRS Second Report*, 9 FCC Rcd. at 1499.

18 *Id.* at 1468.

19 *Id.* at 1469.

20 *Id.*

21 *Id.* at 1472.

22 *See* BellSouth Comments on Further Reconsideration in GN Docket 90-314, Exhibit I, Affidavit of Richard P. Rozek, Vice President, National Economic Research Associates, Inc. at 8 (August 30, 1994).

23 *CMRS Second Report*, 9 FCC Rcd. at 1478.

24 *Hearings on the Federal Communications Commission's Fiscal Year 1995 Before the Subcomm. on Commerce, Justice, State, and the Judiciary of the House Comm. on Appropriations*,

the Commission has acknowledged that competition brings "greater benefits to customers and society than traditional regulation."[25] Thus, given the competitive nature of CMRS, the Commission should refrain from adopting any specific interconnection requirements.[26]

Any CMRS-to-CMRS interconnection arrangements should be established through good faith negotiation among the carriers involved. Although each CMRS provider should have an obligation to satisfy reasonable requests for CMRS-to-CMRS interconnection, the definition of "reasonable" will vary from case to case. The technical and service requirements of a CMRS provider requesting interconnection from another CMRS provider must be balanced against factors such as the ability to provide the needed connection and the existence of alternate sources and forms of interconnection. Moreover, requring direct CMRS-to-CMRS interconnection appears to be unnecessary, because without an agreement for such interconnection, a CMRS carrier can always obtain an indirect interconnection with another CMRS provider through the local exchange

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103d Cong., 2nd Sess., 1994 FCC LEXIS 1630, at *7 (Apr. 18, 1994) (Statement of Reed E. Hundt, Chairman, Federal Communications Commission) ("In fulfilling its responsibility to maintain the viability of affordable telephone service, the Commission must ensure that regulatory barriers do not artificially preclude competition."); *see also Notice*, Statement of Commissioner James E. Quello at 1 ("I believe that we should be asking how a competitive market for mobile communications will allow us to remove regulatory impediments rather than grafting regulatory stop-gap measures upon a family of services yet to be developed and offered by competitors to the public."); Council of Economic Advisors, Executive Office of the President, *Economic Benefits of the Administration's Legislative Proposals for Telecommunications* 2 (June 14, 1994) ("The Administration's legislative proposals will accelerate the rate at which the telecommunications and information revolution arrives . . . by providing a mechanism for removing existing regulatory restrictions as the development of competition makes them unnecessary.").

[25] *Regulatory Treatment of Mobile Services*, Gen. Docket 93-252, *Notice of Proposed Rule Making*, 8 FCC Rcd. 7988, 7998, 8000 (1993) (*Regulatory Treatment Notice*).

[26] This is consistent with Commissioner Barrett's statement that "[w]here there is no issue of interconnection to bottleneck facilities for transport and switching, then I believe there is a higher burden to justify [interconnection] regulatory requirements between CMRS providers, and between resellers and CMRS providers under Title II." *Notice*, Separate Statement of Commissioner Andrew C. Barrett at 1.

telephone network to which both have access.[27] In any case, BellSouth submits that the Commission should refrain from imposing any specific CMRS-to-CMRS interconnection requirements given the competitive state of the marketplace.[28]

2. Interconnection Requirements Should Not Be Based on Promotion of Interoperability

Consistent with its comments filed in Gen. Docket No. 93-252, BellSouth urges the Commission not to require CMRS interoperability, either directly or through an interconnection mandate.[29] Without any specific interoperability requirements, CMRS providers will have market-based incentives to develop and conform to standards in order to attract customers for new services, expand service offerings, and compete with existing services. If existing CPE can be used for a new service, carriers will be able to attract customers whose equipment can currently use the service. On the other hand, requiring interoperability will retard the introduction of new technologies and services that may be superior in quality or functionality, less expensive, or more spectrally efficient, merely because of a lack of interoperability with existing systems. For example, if the Commission had required cellular systems to be interoperable with IMTS, cellular would not have developed as rapidly, if at all.

Not only will interoperability requirements impede the development of new services and applications, they would also wreak havoc with existing services. Requiring interoperability among

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[27] All CMRS providers, by definition, are interconnected with the public switched network. *See* 47 U.S.C. § 332(d)(1), (2); *CMRS Second Report*, 9 FCC Rcd. at 1431.

[28] It should be noted, however, that Section 201 of the Communications Act imposes an interconnection obligation only on common carriers providing interstate service. *See* 47 U.S.C. § 201. It does not affect purely intrastate service providers, and does not impose any obligation on the operators of non-common carrier networks.

[29] Comments of BellSouth in GN Docket 93-252 at 15 (June 20, 1994).

paging systems, for example, may require entire systems to be re-engineered. Paging carriers use different coding schemes and provide different features (*e.g.*, numeric, alphanumeric, tone-only, and voice). Requiring a paging company to provide interoperable interconnection facilities to another in order to allow the second company's customers to roam on the first would only be feasible if the two utilized the same coding and provided the same features. Thus, an interoperability requirement would require many licensees to reconfigure their networks at considerable cost, and with a possibly substantial loss of efficiency, for a minimal benefit.[30] It would also eliminate an important feature of a competitive market -- the ability to engage in product differentiation.

BellSouth submits that the Commission should not attempt to second-guess the marketplace regarding interoperability or set technical standards to encourage it. Interoperability is not appropriate unless there is sufficient demand, it is technically feasible, and it is economically justified. Rulemaking is an inappropriate means for gauging these factors. New CMRS interoperability requirements are both unnecessary and counterproductive.

3. CMRS Providers Should Not Be Required to Provide Unbundled Access to Intelligent Network Services

In its discussion of interoperability, the Commission sought comment on whether CMRS providers should be required to offer interconnection arrangements providing "access to mobile location data bases and to routing information," thereby "enabling customers to use intelligent network services wherever they travel."[31] In particular, the Commission expressed an interest in forms of interconnection that would "ensure that CMRS carriers provide to *end users* of various

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[30] This assumes that an interoperability requirement only applied to those services where interoperability was technically feasible. Interoperability of cellular and paging systems, for example, would be virtually impossible, due to the fundamental differences between the two.

[31] *Notice* at ¶¶ 133-36 (*citing* MCI Comments in GN Docket 93-252 at 10 (Nov. 8, 1993)).

CMRS services the kinds of information contemplated by MCI, *i.e.*, Home Location Register and Visited Location Register."[32] BellSouth submits that this "interconnection" would be contrary to the public interest.

The Commission's concern for providing end users with interconnected access to such information is misplaced. The Home Location Register ("HLR") and Visited Location Register ("VLR") are databases maintained by cellular carriers to facilitate their customers' roaming. Roaming networks that connect cellular carriers together allow the cellular carriers to update each others' databases automatically when customers roam. Cellular customers interface seamlessly with the HLR and VLR databases when they roam, either when their units are automatically registered in a cellular system they are visiting or when they manually turn roaming on or off by transmitting a keypad code. Increasingly, the roaming networks use Signaling System 7 to provide for an exchange of customers' service profiles, thereby allowing customers to "carry" with them the advanced features to which they subscribe in their home systems. Thus, a customer may activate or deactivate call forwarding or voice mail services offered by their home systems while roaming in the same way as they do at home. The end user does not need any special "interconnection" arrangements to use such features.

On the other hand, mandating that CMRS providers provide others, such as interexchange carriers, with interconnection giving them access to the HLR and VLR databases or other components of CMRS providers' intelligent network service offerings would not serve the public interest. Providing others with direct unbundled access to internal features of a CMRS network would discourage CMRS licensees from making advanced services available to their customers. CMRS licensees, like other competitive businesses, compete for customers on the basis of the total

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[32] *Id.* at ¶ 134 (emphasis added).

package of services offered. If individual components of this package must be broken down and made available to competitors or potential competitors, there will be a disincentive to make such services available. A business that has designed its service package with internal features that are desirable to consumers should not be forced to sacrifice the product differentiation advantages that this innovative service offering makes possible.

Moreover, making the end user records regarding the customer's location and current roaming system indiscriminately available to outside companies would be contrary to the customer's expectations. Information concerning the customer's roaming registration is confidential for good reason: the customer expects that this information will be used by the carrier for internal purposes and disclosed to others only when needed to provide the services for which the customer has contracted. Customers have not consented to the disclosure of such information to the world at large. Disclosing this information through interconnected database access thus threatens the customer's reasonable expectation of privacy.

Second, providing interexchange carriers with directly interconnected access to the HLR and VLR databases could interfere with the cellular customer's contractual relationship with his or her home cellular carrier. For example, this would give interexchange carriers the ability to bypass features ordered by the customer, such as forwarding to a different number of diverting incoming calls to voice mail.[33] If the interexchange carrier seeking to complete a call to a customer could obtain the customer's location directly from the database, the cellular carrier could not ensure that the customer obtains the type of service desired.

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[33] When traveling, many cellular subscribers seek to minimize their roaming charges, avoid having to deal with routine calls, or maintain their privacy, by having calls diverted to voice mail instead of being delivered to their roaming carrier for completion.

4. CMRS Providers Should Not Be Required to Create Artificial Opportunities for Switch-Based Resale

The Commission sought comment on whether it should impose interstate interconnection obligations on "CMRS resellers using their own switches."[34] BellSouth suggests that resellers should be under the same obligations with respect to providing interconnection to other CMRS providers as govern all CMRS providers. There are not presently any switch-based resellers, and there does not appear to be any reason to adopt special policies for a class of CMRS providers that does not, and may never, exist.[35]

The Commission noted, in passing, that some cellular resellers have sought in another docket to require cellular carriers to offer special forms of interconnection to resellers to allow the resellers to "use their own switch to provide certain technically advanced features to their customers."[36] It did not, however, give notice of any intention to adopt such interconnection requirements.[37]

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[34] *Notice* at ¶ 128.

[35] California has been studying the feasibility of switch-based cellular resale for several years. No reseller presented even a proposal for how this could be implemented generically. One reseller proposed establishing a switched resale system in certain specific markets, but the proposal relied on "capabilities of switches and switch software that have not yet been developed, tested, or made available on the open market." *See Investigation on the Commission's Own Motion into the Regulation of Cellular Radiotelephone Utilities*, Investigation No. 88-11-040, Decision No. 92-10-026, 1992 Cal. PUC LEXIS 833, at *41-50 (Cal. P.U.C. Oct. 6, 1992) (*CPUC Phase III Decision*), *rehearing granted in part*, Decision No. 93-05-069, 1993 Cal. PUC LEXIS 412 (Cal. P.U.C. May 19, 1993) (*CPUC Phase III Rehearing*). *See also Investigation on the Commission's Own Motion into Mobile Telephone Service and Wireless Communications*, Investigation No. 93-12-007, Decision No. 94-08-022, Slip Op. at 80-81 (Cal. P.U.C. Aug. 3, 1994)(*Wireless OII Interim Decision*).

[36] *Notice* at ¶ 128 (citing Ex Parte Letter in GN Docket 93-252, from David Gusky, Executive Director, National Cellular Resellers Association (Jan. 5, 1994)).

[37] Accordingly, the Commission cannot adopt rules requiring CMRS providers to provide special interconnection arrangements to switch-based resellers. *See* 5 U.S.C. § 553(b).

BellSouth agrees with the Commission's decision not to propose any requirement that CMRS licensees restructure their networks to provide resellers with artificially created opportunities for switch-based resale. The advocates of switch-based resale have yet to present any concrete, specific proposals for how switch-based resale would work, both technically and financially.[38] Moreover, switch-based resale is not an issue of interconnection so much as a matter of establishing preferential unbundled rates. Creating an opportunity for the development of switch-based resale would require a time-consuming and complex proceeding for the unbundling of CMRS licensees' service into discrete low-level components, together with development of detailed cost accounting rules and rate regulation policies.[39] The Commission has not adopted such rules or policies for cellular or other CMRS licensees to date, and BellSouth suggests they would be most inappropriate in a competitive industry.[40]

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[38] *See CPUC Phase III Decision* at *41-50; *CPUC Phase III Rehearing* at *12.

[39] *See CPUC Phase III Rehearing* at *12; *CPUC Phase III Decision* at *50-65. Despite its determination in these decisions that detailed cost-of-service regulation was needed to deal with the unbundling of services to permit switch-based resale, in the *Wireless OII Interim Decision* the California PUC decided not to adopt such regulations, and instead required unbundling at market-based rates, upon receipt of a *bona fide* request from a reseller wishing to obtain the interconnections needed for switched resale. *Wireless OII Interim Decision* at 80-83.

[40] The California PUC has required cellular carriers to unbundle landline transmission and switching functions from radio transmission service, and is considering requiring similar unbundling for all wireless carriers. In opening its inquiry, it emphasized that such unbundling was intimately related to "costing and pricing issues," and acknowledged its concern "that such unbundling *requires cost-based regulation* and that it may be *incompatible with other regulatory frameworks* from which the Commission might choose." *Investigation on the Commission's Own Motion into Mobile Telephone Service and Wireless Communications*, Investigation No. 93-12-007, *Order Instituting Investigation*, 1993 Cal. PUC LEXIS 836, at *41-42 (1993) (*CPUC Wireless OII*) (emphasis added). Due to this concern, the California PUC asked about "the advisability of engaging in a process of unbundling if we expect the market to be competitive in the future and whether unbundling requirements are needed in a competitive market." *Id.* at *42. In a recent decision, it decided not to engage in cost-based regulation of cellular carriers and allowed them to set market-based rates for unbundled interconnection services. *See Wireless OII Interim Decision*, slip op. at 80-83.

5. The Commission Should Not Require Tariffs for Interconnection Furnished by CMRS Operators

The same considerations that warrant not requiring LECs to file interconnection tariffs have even greater merit with respect to any interconnection services or facilities made available by CMRS providers to other CMRS providers. Direct interconnection with cellular and other CMRS licensees is not essential to the operation of a CMRS system, since an indirect interconnection can always be achieved through the LEC facilities with which both CMRS operators are interconnected. To the extent there are significant cost savings or other benefits from direct interconnection, the two CMRS licensees should be able to negotiate a mutually beneficial interconnection agreement. There is, accordingly, no reason to require any class of CMRS licensees to file interconnection tariffs.

C. The Commission Should Preempt State Regulation of CMRS-to-CMRS Interconnection

Under Section 332(c)(3) of the Communications Act, states may not regulate the rates charged by CMRS providers,[41] and in the *CMRS Second Report* the Commission correctly construed this to preempt state regulation of the rates charged by a CMRS provider for interconnection.[42] In the present proceeding, the Commission has sought comment on whether it should preempt states from requiring CMRS-to-CMRS interconnection in the event the FCC does not require it.[43]

If, as BellSouth urges, the Commission finds that such a requirement is contrary to the public interest, states would not be able to require such interconnection. The establishment of separate interconnection requirements in each state would not only conflict with the federal determination

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41 47 U.S.C. § 332(c)(3).

42 *CMRS Second Report* at ¶ 237.

43 *Notice* at ¶ 143.

that requiring CMRS-to-CMRS interconnection does not serve the public interest; it would also be contrary to Congressional intent to facilitate the "growth and development of mobile services that, by their nature, operate without regard to state lines."[44]

For example, in PCS, the Commission has established a regulatory framework that will allow for the rapid development and deployment of services. Many PCS systems will operate across state lines, either on their own or through cooperative arrangements among PCS licensees. Differing state regulations regarding the types of interconnection that must be provided by such licensees to other CMRS providers will inhibit the roll-out of these services.

Another example of how state CMRS-to-CMRS interconnection requirements might impede the growth of national and regional systems is that a single state might require its cellular carriers to provide interconnection to Enhanced SMR licensees, allowing ESMRs to use the cellular roaming network. This might result in a need to reconfigure the national or regional roaming network, at considerable cost to cellular licensees outside the state imposing the requirement, or it might cause cellular carriers to withdraw from such roaming networks.

If states were allowed to regulate CMRS-to-CMRS interconnection as part of their regulation of "other terms and conditions of service,"[45] a carrier who develops a new service or application could not move forward until it is sure that the application will satisfy the interconnection requirements of each state. Congress enacted Section 332 to foster the growth and development of a competitive mobile service industry; state regulation was restricted in order to further the goal of

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[44] H.R. Rep. No. 103-111, 103d Cong., 1st Sess. 260 (1993), *reprinted in* 1993 U.S.C.C.A.N. 587.

[45] 47 U.S.C. § 332(c)(3)(A).

regulatory parity -- similar CMRS providers must be regulated alike.[46] State regulation that imposes interconnection obligations or other regulations on carriers that are different from those imposed by the FCC impedes this central objective of Congress and is properly preempted.

The Commission has previously held that state regulation of the type of interconnection provided by LECs to cellular carriers should be preempted.[47] BellSouth submits that it would be contradictory for the Commission to preempt LEC-cellular interconnection and to allow state regulation of the type of interconnection provided by CMRS licensees to other CMRS licensees. Accordingly, state regulation of CMRS-to-CMRS interconnection should be preempted.

II. RESALE ISSUES

A. The Commission Should Generally Forbid Restrictions on Resale by CMRS Providers

BellSouth supports application of the Commission's cellular resale policy to other CMRS providers, such as Broadband PCS and Enhanced SMR licensees. This resale policy, which was established in 1976,[48] has consistently been applied to interstate common carriers, and later to cellular licensees. In prohibiting restrictions on resale, the Commission has made clear that any common carrier imposing restrictions generally would violate Sections 201(b) and 202(a) of the Communications Act. Further, in extending the application of the resale policy to cellular, the Commission determined that, pursuant to Section 309 of Communications Act, cellular licenses

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[46] *See* H.R. Rep. No. 103-213, 103d Cong., 1st Sess. 494 (1993), *reprinted in* 1993 U.S.C.C.A.N. 1183.

[47] *See Interconnection Order,* 2 FCC Rcd. at 2911-13.

[48] *See Resale and Shared Use*, Docket No. 20097, *Report and Order*, 60 FCC 2d 261 (1976), *recon.*, 62 FCC 2d 588 (1977), *aff'd sub nom. AT&T v. FCC*, 572 F.2d 17 (2d Cir.), *cert. denied,* 439 U.S. 875 (1978).